

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TERRY MONSKY, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

DIRECT DIGITAL HOLDINGS, INC.,
MARK WALKER, KEITH W. SMITH,
DIANA DIAZ, and DIRECT DIGITAL
MANAGEMENT, LLC,

Defendants.

Case No. 4:24-cv-01940
(consolidated with Case No. 4:24-cv-
02567)

**DEFENDANTS' MOTION FOR LEAVE TO FILE
RESPONSE TO PLAINTIFF'S SUR-REPLY**

Pursuant to Rule VII.A of this Court's Procedures, Defendants file this motion for leave to file the attached response to Plaintiff's sur-reply.¹ Ex. A. Plaintiff filed a multi-page sur-reply brief to address essentially two parenthetical citations in Defendants' reply, one of which, contrary to Plaintiff's assertion in their motion for leave, involved related litigation previously noted in Defendants' motion to dismiss. This disparity in briefing, combined with the principle that the moving party (here, Defendants) should "normally be permitted to open and close the briefing," *Springs Indus., Inc. v. Am. Motorists Ins. Co.*, 137 F.R.D. 238, 239 (N.D. Tex. 1991), provides good cause to grant Defendants leave to file a response, *see Murray v. TXU Corp.*, No. CIV.A. 303CV0888P, 2005 WL 1313412, at *4 (N.D. Tex. May 27, 2005) (explaining that the ordinary briefing process is designed "to give the movant the final opportunity to be heard"). Accordingly,

¹ Defendants planned to respond to Plaintiff's April 23, 2025 motion for leave to file his sur-reply by the May 14, 2025 response deadline. S.D. TEX. LOC. RULES 7.3-7.4. Because the Court granted that motion for leave on May 9 and docketed the sur-reply, however, Defendants seek leave to respond to the sur-reply itself.

Defendants respectfully request that the Court grant leave to file a response to the arguments raised in Plaintiff's sur-reply.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Danny David

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via ECF and/or electronic mail on all counsel of record on this 14th day of May, 2025.

/s/ Amy Pharr Hefley
Amy Pharr Hefley

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for Plaintiff on May 13, 2025 and confirmed that Plaintiff is opposed to the relief sought in this motion for leave.

/s/ Anthony J. Lucisano
Anthony J. Lucisano